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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 26092 | 7590 | 05/02/2007 | | |
| KYLE W. ROST 5490 AUTUMN CT. GREENWOOD VILLAGE, CO 80111 | | | EXAMINER MCKINLEY, CHRISTOPHER BRIAN | |
| | | | ART UNIT 3781 | PAPER NUMBER |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/710,816

Applicant(s)

WERTH, ELMER D.

Examiner

Christopher B. McKinley

Art Unit

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 August 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/4/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 7, 9 and 10 are rejected under 35 U.S.C. 103(a) as being obvious over Wright (4,613,063). Wright discloses the limitations of the claims including a container (fig. 1, 10) comprising a sidewall (14), first end wall (16), second end wall (38) having an extension wall and end panel (32), the extension wall of smaller transverse dimension than the maximum transverse dimension of the side wall, the end panel joined at the second end line (40) at a position outside the second end line, the end panel includes a pre-formed dispensing opening (34) offset the center, a cap (12) having a central panel (18) and a side skirt (20) rotatably engaging and substantially non-removable from the extension wall (Abstract), the central panel defines a cap opening (22) wherein the said opening can be moved with rotation of said cap between a registered position and a non-registered position, the second wall and said side wall are of one-piece construction (fig. 2), a rotational limiting means (52) and a method of filling a container with contents through said first end and applying said first end (16) by an interlocking connection (line of 15 of abstract). With respect to the "providing" limitations of claim 10, these limitations are "provided" by Wright ('063) as they are present in the product, as noted above. Wright does not have a draw and ironed container. However it would have

been obvious to one having ordinary skill in the art at the time of invention to have modified Wright with iron as opposed to plastic in order produce a container with a higher strength and lower ductility, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

3. Claims 1 and 6 are rejected under 35 U.S.C. 103(a) as being obvious over Sovari et al. (4,125,203) in view of Wright ('063) as described in par. 2. Sovari et al. discloses the limitations of the claims including a container (fig. 1) comprising a sidewall (1), first end wall (col. 2, line 63), second end wall (top of the container) having an extension wall (wall extending beyond reference number 4 in the vertical direction and 5) and end panel (3), the extension wall of smaller transverse dimension than the maximum transverse dimension of the side wall, the end panel joined at the second end line (fig. 3, 6) at a position outside the second end line, the end panel includes a pre-formed dispensing opening (fig. 7, 15) offset the center, a cap having a central panel (fig. 3, 3) and a side skirt (8) rotatably engaging and substantially non-removable from the extension wall (col. 2, 68), the central panel defines a cap opening (fig. 4, 15) wherein the said opening can be moved with rotation of said cap between a registered position and a non-registered position, the second wall and said wall are of one-piece construction (fig. 3). Sovari et al. exclude what Wright as described in par. 2 teaches, a draw and ironed container and a first wall being seamed to the sidewall (fig. 1) for the purpose of producing a stronger, more durable container and to provide a means of

filling the container (col. 5, line 24). Therefore it would have been obvious to one having ordinary skill in the art at the time of invention to have modified Sovari et al. with the aforementioned structural features in order to produce a stronger, more durable container and to provide a means of filling the container in as much as Sovari suggests using any suitable means to attaching a first end/bottom to the sidewall (col. 2, line 63).

4. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wright (4,613,063) as described in par. 2 in view of Cagan (6,216,904). Wright as described in par. 2 discloses all the limitations of the claims, as described in par. 5, excluding a sealing means juxtaposed to said pre-formed dispensing opening. However, Cagan teaches a sealing means (fig. 4, 18) juxtaposed to a pre-formed opening for the purpose of closing the receptacle (col. 9, line 46). Therefore it would have been obvious to one having ordinary skill in the art at the time of invention to have modified Wright as described in par. 2 with a sealing means juxtaposed to said pre-formed dispensing opening in order to close the receptacle.

5. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wright (4,613,063) as described in par. 2 in view of Gentile (3,726,432). Wright as described in par. 2 discloses all the limitations of the claims, as described in par. 5, excluding a gasket between said central panel and end panel. However, Gentile teaches the use of a gasket between said central panel and end panel for the purpose of sealing the lid and container top together around the opening (col. 5, line 54). Therefore it would have been obvious to one having ordinary skill in the art at the time of invention to have

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modified Wright as described in par. 2 with a gasket between said central panel and end panel in order to seal the lid and container top together around the opening.

6. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wright ('063) as described in par. 2 in view of Weinstein (5,058,778). Wright ('063) as described in par. 2 disclose the invention substantially as claimed, excluding a vent in the central panel, a button closing the vent with partial periphery connecting the button to the central panel and the placement of the gasket. However, Weinstein teaches a vent in the central panel (fig. 3, 147) and a button closing the vent with a partial periphery connecting the button to the central panel (145) for the purpose of providing airflow in the dispensing process. Therefore it would have been obvious to one having ordinary skill in the art at the time of invention to have modified Wright as described in par. 2 with a vent in the central panel and a button closing the vent with a partial periphery connecting the button to the central panel in order to provide airflow in the dispensing process. Regarding the placement of the gasket, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the gasket encircle the sealing means, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

Response to Arguments

7. Applicant's arguments with respect to claim 1-5 and 7-9 have been considered but are moot in view of the new ground(s) of rejection.

8. Applicant's arguments, see page 2, filed 2/15/2007, with respect to the rejection(s) of claim(s) 1 and 6 under U.S.C. 102(b) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher B. McKinley whose telephone number is (571) 272-3370. The examiner can normally be reached on 7:00 AM - 3:30 AM.

10. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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